

Served: March 14, 1997

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON,

Issued by the Department of Transportation
on the 24th day of February, 1997

Applications of :
CARGOLUX AIRLINES INTERNATIONAL, S.A. : DOCKETS OST 95-731
and :
LAUDA AIR LUFTFAHRT AG : OST 96-1908
for foreign air carrier permits under :
section 41301 of Title 49 of the U.S. Code :

ORDER ISSUING FOREIGN AIR CARRIER PERMITS

Cargolux seeks renewal and amendment of its foreign air carrier permit, last issued by Order 90-11-21, under section 41301 of Title 49 of the U.S. Code (formerly section 402 of the Federal Aviation Act of 1958, as amended) in order to conduct scheduled operations between Luxembourg and the United States, and charters. Lauda Air Luftfahrt AG (Lauda) seeks an initial foreign air carrier permit to conduct scheduled operations between Austria and the United States, and charters. The applications are fully described in the attachments to this order. Because the public interest bases for granting these applications are clear, the applicants' fitness is established by evidence of record and unchallenged, and there are no significant ownership and control questions, it is appropriate to use this simplified, Subpart Q procedure to grant the requested authorities.¹

The applicants have filed and perfected their applications as required by 14 CFR Part 211 and served them as required by 14 CFR 302.1705. The applications were summarized in the Federal Register, as cited in the descriptive attachments, and in the Department's published weekly list of applications filed. These notices described the authorities sought and gave interested persons an opportunity to submit evidence and objections to the award of the authorities. No answers to the applications were filed.

Public Interest

¹ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

We find, for the reasons set forth in the attachments, that grant of Cargolux's and Lauda's requests is in the public interest and that both carriers are qualified to conduct the proposed operations. Further, Cargolux and Lauda have been designated by their homeland governments under the terms of the existing Air Transport Agreements between those governments and the Government of the United States.

Operational and Financial Fitness

Both carriers have demonstrated that they are financially, managerially and operationally fit to perform the foreign air transportation proposed. Cargolux and Lauda already have operated successfully to this country under previously issued authorities and have furnished financial information which indicate that they can operate without jeopardizing passenger or shipper funds.

We have reviewed Cargolux's and Lauda's evidence of managerial/operational fitness, and have consulted the Federal Aviation Administration. Both carriers have demonstrated that they have competent management and can operate safely. Further, they hold effective authority from their homeland governments for the operations proposed and state that they have had no safety or tariff violations in the preceding five years. The Federal Aviation Administration has advised us that Cargolux and Lauda conduct operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

Ownership and Control

Both Cargolux and Lauda have submitted evidence to establish that they are substantially owned and effectively controlled by nationals of their homelands.

Terms, Conditions and Limitations

The foreign air carrier permits are subject to the standard terms, conditions and limitations we consistently impose in the public interest. The duration of the permits is made coextensive with the existing Air Transport Agreements between the carriers' homelands and the United States.²

Findings and Conclusions

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue a renewed and amended foreign air carrier permit to Cargolux, and an initial foreign air carrier permit to Lauda, in the forms attached;
2. Cargolux and Lauda are qualified and designated by their governments under the applicable agreements;
3. Cargolux and Lauda are fit, willing and able to perform properly the foreign air transportation described in their attached permits, and to conform to the provisions of the Act and to the Department's rules, regulations and requirements;

² We note that Cargolux requested that its permit be issued for a period of ten years. However, in keeping with our usual practice, the effectiveness of Cargolux's foreign air carrier permit will be coextensive with effectiveness of the U.S.-Luxembourg Air Transport Agreement.

4. The public interest requires that the exercise of the privileges granted by the attached permits be subject to the terms, conditions and limitations contained in and attached to the permits and to such others required by the public interest as the Department may prescribe;
5. The record in this proceeding supports a finding that Cargolux and Lauda are substantially owned and effectively controlled by nationals of their homelands; however, to the extent that a question might exist concerning the ownership and control of the carriers, we find that waiver of our ownership and control standards, to the extent necessary, is warranted as there is nothing in the ownership and control of the applicants which would be inimical to U.S. aviation policy or interests;
6. The issuance of these permits does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;³ and
7. The public interest does not require an oral evidentiary hearing on these applications.

ACCORDINGLY,

1. We issue, in the forms attached, a renewed and amended foreign air carrier permit to Cargolux and an initial foreign air carrier permit to Lauda;
2. To the extent not granted, the applications in Dockets OST 95-731 and OST 96-1908 are denied;
3. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code (formerly section 801(a) of the Act), this order and the attached permits shall become effective on the 61st day after their submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁴ and
4. We will serve this order on Cargolux Airlines International, S.A., Lauda Air Luftfahrt AG, the Ambassadors of Austria and Luxembourg in Washington, D.C., the Department of State (Office of Aviation) and the Federal Aviation Administration (AFS-50).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

³ Our finding is based on the fact that the permits will not result in a near-term increase in annual fuel consumption by the applicants in excess of 10 million gallons.

⁴ This order was submitted for section 41307 review on February 24, 1997. On March 10, 1997, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

(SEAL)

Foreign Air Carrier Permit Application of
CARGOLUX AIRLINES INTERNATIONAL, S.A.
Docket OST 95-731

Flag: Luxembourg

Federal Register Notice: 205 FR 54560, October 24, 1995

Filing Date: October 11, 1995

Authority Sought: Renewal of, and amendment to, Cargolux's existing foreign air carrier permit, which allows the carrier to conduct scheduled cargo operations between Luxembourg and five specified U.S. cities, and charters, in order for the carrier to conduct scheduled foreign air transportation of property and mail, and persons on the upper deck of its freighter aircraft, from points behind Luxembourg, via Luxembourg and intermediate points, to a point or points in the United States, and beyond, and to conduct charter operations under 14 CFR Part 212.

Pleadings: None.

Public Interest: The authorities requested are encompassed by the Air Transport Agreement between the Government of Luxembourg and the Government of the United States, as amended.

Fitness: Cargolux has held Department authority to conduct U.S.-Luxembourg operations since 1979 and to conduct the operations specified above, by Department exemption, since October 30, 1995. Its most recent foreign air carrier permit, which authorized the services noted above, was issued by Order 90-11-21. Cargolux is properly licensed and designated by its homeland to conduct the operations requested here and has experienced management. Cargolux represented that it has had no serious accidents in the last five years.

Financial Indicators (\$ million U.S.) as of: 12/31/94 12/31/95

Total Assets	\$507	\$585
Total Liabilities	400	470
Owners' Equity	107	115
Net profit (loss)	3	11

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirements) and 129 (FAA operations specifications.)

Ownership and Control: The majority (11 of 14) of the carrier's Board of Directors are citizens of Luxembourg. Of the carrier's 13 key management personnel, five are citizens of Luxembourg; three are citizens of Iceland; two are citizens of Britain; two are citizens of Germany; and one is a citizen of Denmark. Further, 75.5 percent of Cargolux's stock is held by citizens of Luxembourg; the remaining 24.5 percent is held by Lufthansa Cargo Airlines, of Germany. The record supports a finding that Cargolux is substantially owned and effectively controlled by citizens of Luxembourg; however, to the extent that a question might exist concerning the ownership and control of Cargolux, we find, based on the record, that waiver of our ownership and control standards, to the extent necessary, is warranted as there is nothing in the ownership and control of the applicant which would be inimical to U.S. aviation policy or interests.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER
(as amended and reissued)

CARGOLUX AIRLINES INTERNATIONAL, S.A.

A Flag Carrier of Luxembourg

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of property and mail, and persons on the upper deck of its freighter aircraft, as follows:

From a point or points behind Luxembourg, via Luxembourg, and intermediate points, to a point or points in the United States, and beyond.

The holder shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third-country point, provided that such charter traffic is carried on a flight that serves Luxembourg for purposes of carrying traffic between the United States and Luxembourg.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Luxembourg are or shall become parties.

This permit shall be effective on March 1, 1997. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate: (1) upon the liquidation or dissolution of the holder to which it was issued; (2) upon the effective date of any treaty, convention, agreement, or amendment which shall have the effect of eliminating the bilateral right for the service authorized by this permit; (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Grand Duchy of Luxembourg in lieu of the holder; or, (4) upon the termination or expiration of the Air Transport Service Agreement between the United States of America and the Grand Duchy of Luxembourg, as amended (or in the event of the termination or expiration of any part of the Air Service Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration). However, clause (4) of this paragraph shall not

apply if, prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention, or agreement to which the United States and the Grand Duchy of Luxembourg become parties.

The Department of Transportation has executed this permit and affixed its seal on
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By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Foreign Air Carrier Permit Application of

LAUDA AIR LUFTFAHRT AG

Docket OST 96-1908

Flag: Austria

Federal Register Notice: 61 FR 56603, November 1, 1996

Filing Date: October 25, 1996

Authority Sought: Initial foreign air carrier permit to provide: (1) scheduled foreign air transportation of persons, property and mail from a point or points behind Austria, via Austria and intermediate points, to a point or points in the United States, and beyond; (2) charters between any point or points in Austria and any point or points in the United States; (3) charters between any point or points in the United States and any point or points in a third country or countries, provided such service constitutes part of a continuous operation that includes service to Austria; and (4) other charters, in accordance with the Department's regulations (14 CFR Part 212.)

Pleadings: No answers were filed.

Public Interest: The authorities requested are consistent with the Memorandum of Consultations (MOC) of March 8, 1995, signed by the Governments of Austria and the United States, which amended the 1989 Air Transport Service Agreement (Agreement) between those countries.

Fitness: Lauda conducted charters within Austria commencing in 1979 and operations between Austria and Asia/Australia in 1988. Lauda holds Department exemptions to conduct foreign air transportation of persons, property and mail as follows: (1) charters between Austria and the United States, and other charters; and (2) scheduled operations between Vienna, Austria, on the one hand, via the intermediate point Munich, Germany, and Miami, Florida, and Los Angeles, California, on the other (see Notices of Action Taken June 19, 1996, in Dockets 47322 and 47902). Lauda is properly licensed and designated by its homeland to conduct operations as proposed here and has experienced management. By its request, Lauda represented that it has not been involved in any safety or traffic violation(s) within the last five years.

Financial Indicators (\$thousands U.S.) 10/31/94 10/31/95

Total Assets	\$322,762	\$344,514
Total Liabilities	81,123	82,363
Owners' Equity	241,639	262,151
Operating Profit (loss)	\$3,808	\$4,380

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirements), and 129 (FAA operations.)

Ownership and Control: All of Lauda's key management personnel are Austrian citizens with the exception of one of its four supervisory board members and one of its eight Board of Directors, both of whom are German citizens. Additionally, Lauda's vice-president holds dual Austrian and Greek citizenship. Approximately forty percent of Lauda's ownership is held by Lauda Air GesmbH, of Austrian citizenship, and an additional forty percent is held by Lufthansa German Airlines. The remaining ownership of approximately twenty percent is traded openly on the Austrian Stock Market (Lauda represented that to the best of its knowledge, no single person or entity owns five percent or more of these shares and that most of these shareholders are Austrian citizens.) To the extent that a question might exist concerning the ownership and control of Lauda, we find, based on the record, that waiver of our ownership and control standards, to the extent necessary, is warranted, as there is nothing in the ownership and control of the applicant which would be inimical to U.S. aviation policy or interests.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO A FOREIGN AIR CARRIER

LAUDA AIR LUFTFAHRT AG

A Flag Carrier of Austria

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules and regulations of the Department of Transportation, to engage in scheduled foreign air transportation carrying persons, property and mail as follows:

From points behind Austria, via Austria and intermediate points, to a point or points in the United States, and beyond.

The holder shall also be authorized to engage in other charters, subject to the terms, conditions and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third-country point, provided that such charter traffic is carried on a flight that serves Austria for purposes of carrying traffic between the United States and Austria.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Austria are or shall become parties.

This permit shall be effective on March 10, 1997. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the liquidation or dissolution of the holder to which it was issued; (2) upon the effective date of any treaty, convention, agreement or amendment which shall have the effect of eliminating the bilateral right for the service authorized by this permit; (3) upon the effective date of any permit granted by the Department to any other carrier designated by Austria in lieu of the holder; or (4) upon the termination or expiration of the Air Transport Agreement between the United States and Austria, as amended (or in the event of the termination or expiration of any part of the Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration.) However, clause (4) of this paragraph shall not apply if, prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Austria become parties.

The Department of Transportation has executed this permit and affixed its seal on
.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

ACTION: Dockets OST 95-731 and 96-1908:
Applications of Cargolux Airlines International, S.A.,
and Lauda Air Luftfahrt AG for foreign air carrier
permits

Paul L. Gretch, Director
Office of International Aviation, X-40

Charles Hunnicutt
Assistant Secretary for Aviation
and International Affairs

We recommend that you issue the attached draft order that would, subject to review under 49 U.S.C. 41307, grant Cargolux's and Lauda's requests for foreign air carrier permits in order for: (1) Cargolux to conduct scheduled foreign air transportation of property and mail, and persons on the upper deck of the carrier's freighter aircraft, from a point or points behind Luxembourg, via Luxembourg and intermediate points, to a point or points in the United States, and beyond, and charters; and (2) Lauda to conduct scheduled combination operations from points behind Austria, via Austria and intermediate points, to a point or points in the United States, and beyond, and charters.

The authorities are non-controversial. Cargolux presently holds Department exemption authority to conduct the operations for which permit authority is requested; Lauda holds Department exemption authorities to conduct: (1) Austria-U.S. charters, and other charters; and (2) scheduled combination operations between Vienna, Austria, on the one hand, via the intermediate point Munich, Germany, and Miami, Florida, and Los Angeles, California, on the other. Further, the authorities requested are bilateral rights encompassed by the U.S.-Luxembourg and U.S.-Austria Air Transport Agreements.